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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

94-104

Dear Sir:

Enclosed herein is an original and four (4) copies of Comments, submitted on behalf of Pittencrieff Communications, Inc., in response to the Petition to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services, filed by the Arizona Corporation Commission, **PR File No. 94-SP2.**

If any questions should arise related to these Comments, please contact the undersigned counsel.

Sincerely,


Susan H.R. Jones

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Petition to Extend State Authority)
Over Rate and Entry Regulation)
of All Commercial Mobile Radio)
Services, Filed by Arizona)
Corporation Commission)

PR File No. 94-SP2

In the Matter of)
)
Implementation of Sections 3(n))
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile)
Services)

GN Docket No. 93-252

COMMENTS OF PITTENCRIEFF COMMUNICATIONS, INC.

To : Office of the Secretary

Pittencrieff Communications, Inc. ("PCI"), by its attorneys, respectfully submits these Comments in the above referenced proceeding, in response to a Petition filed by the Arizona Corporation Commission ("ACC"), seeking to extend its state regulatory authority over rate and entry regulation of all commercial mobile radio service ("CMRS") providers in the state of Arizona. PCI is a provider of private carrier paging services, and conventional and trunked specialized mobile radio ("SMR") service in the state of Arizona. In addition, PCI is party to a pending transaction that, once consummated, would establish PCI as a provider of "wide area" SMR service in the Phoenix, Arizona region. Because the Commission has recently

reclassified some types of SMR providers -- those which provide interconnected service, at a profit, to the public -- as CMRS providers, PCI is an interested party to this proceeding, and accordingly, welcomes this opportunity to provide Comments to ACC's Petition.

The ACC Has Not Met Its Burden, Imposed by Statute, To Extend Its State Regulatory Authority Over All CMRS Providers In Arizona.

The Commission has initiated this proceeding pursuant to congressional directive to implement Sections 3(n) and 332 of the Communications Act of 1934 ("the Act"), as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"). It has already issued several decisions affecting the regulation of CMRS providers. This phase of the proceeding, however, is designed to determine the extent to which states may continue to regulate CMRS rates and marketplace entry. Several states, including Arizona, requested such authority.

The Commission noted in the Second Report and Order^{1/} to this proceeding, that "any state filing a petition pursuant to Section 332(c)(3) shall have the burden of proof that the state has met the statutory basis for the establishment or continuation of state regulation of rates." This burden must be fulfilled by the submission of evidence to support the state's petition. The Commission states conclusively that "if [the Commission] determine[s] that the state has failed to meet this burden of proof, then [the Commission] will deny the petition."^{2/}

^{1/} Second Report and Order, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 94-31, _____ FCC Rcd _____ (1994) (Second Report and Order).

^{2/} Second Report and Order, paragraph 251.

In its Petition, the ACC presents arguments and evidence *only* with respect to the regulation of *cellular mobile radio services*. Apparently assuming that cellular providers are the only services encompassed by the CMRS classification, the ACC refers broadly to CMRS, yet refers only to *cellular* providers in its arguments and supporting evidence. On page two (2) of its petition, the ACC notes:

It is the Arizona Corporation Commission's belief that a high degree of public interest attaches to the provision of CMRS; that *cellular mobile radio services* have, for a variety of reasons, become essential services to the individual subscribers . . . [c]onsequently, the ACC seeks to preserve its ability to regulate the rates of the CMRS providers offering service within the state of Arizona.

Throughout its Petition, ACC asserts that the state should continue its regulatory authority over providers of *cellular* service in the state of Arizona. For example, ACC notes that rate regulation is necessary in certain rural parts of the state where competition is decreased and *cellular* service substitutes for landline carriage^{3/}; ACC argues that, if its regulatory authority is extended, it will enforce the notion that "all telecommunications service providers, *including cellular*, should be required to help fund the maintenance of universal service objectives"^{4/}; addressing concerns to restrict monopolies, ACC boasts that "[p]ursuant to its Constitutional mandate, the ACC has actively regulated *cellular mobile service providers* since September 14, 1983," to ensure that competition among the cellular providers is active^{5/}; on page ten (10) of its Petition, the ACC lists those entities currently

^{3/} ACC Petition, at 7.

^{4/} ACC Petition, at 7.

^{5/} ACC Petition, at 9.

regulated under state authority, *all of which are cellular providers*; the ACC notes that its current regulatory structure "benefits the public, in particular that segment of the public that constitutes *cellular subscribers*"^{6/}; in discussing market competition, the ACC focuses entirely upon the duopoly rules and *cellular service areas*.^{7/}

In apparent support of its numerous points raised to support extending Arizona's regulatory authority over all CMRS entities, the ACC provides transcripts of proceedings before the Arizona Corporation Commission, all of which document applications by *cellular* entities to enter, construct, operate, or file tariffs for *cellular* service. Other than the information on cellular providers, ACC has provided no data, no customer surveys or information on complaints, no rate information, or details on types of mobile services provided by entities in Arizona. ACC's Petition is, in fact, silent with respect to any discussion, analysis or data, review, or cogent argument regarding any CMRS provider other than cellular.

CMRS providers encompass many entities other than cellular licensees. The Second Report and Order found that all of the following categories of FCC licensees might be considered CMRS providers: Part 22 public mobile services; including air-to-ground service; Public Coast Stations; private paging, except for internal use; 220 MHz Private Land Mobile, except for internal use or when not interconnected with the public switched network; Specialized Mobile Radio ("SMR") services; unless not interconnected with the public switched network, and wide-area Specialized Mobile

^{6/} ACC Petition, at 11.

^{7/} ACC Petition, at 14.

Radio services; business radio service, except for internal use or when not interconnected to the public switched network; personal communications services ("PCS"); and mobile satellite services ("MSS"). While the ACC's legitimate interests in protecting the public may be justified with respect to cellular providers, there is no evidence that there are similarly legitimate concerns with respect to the other CMRS licensees. As the Commission recently concluded in another proceeding, the Commission has acknowledged that cellular providers possess market power while other CMRS providers do not.^{8/} Allowing the ACC to regulate all CMRS providers, in light of the Commission's findings in proceedings related to this one, and particularly in light of ACC's failure to present any evidence in support of its Petition, would not be in the public interest.

Moreover, such a glaring omission with respect to the commercial mobile industry *beyond cellular* in ACC's Petition suggests that, perhaps, the Arizona Corporation Commission is *unaware* of the existence of any CMRS provider other than cellular. Such an implication is troubling. PCI asserts that, as a general matter, the FCC should not grant authority to a state regulatory authority which clearly fails to acknowledge or adequately distinguish, the substantially different segments of the CMRS industry. By such an omission, ACC has failed to justify the extension of its authority of "all CMRS providers," specifically those CMRS providers other than

^{8/} Notice of Proposed Rule Making and Notice of Inquiry, In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, paragraph 12.

cellular, and PCI urges the Commission to retain its federal pre-emption and deny ACC's Petition.

IN CONCLUSION, PCI respectfully asserts that the ACC has failed to carry its burden of proof to warrant the extension of its regulatory authority over all CMRS providers. Accordingly, PCI respectfully urges the Federal Communications Commission to deny the Petition filed by Arizona Corporation Commission's to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services.

Respectfully submitted,

PITTENCRIEFF COMMUNICATIONS, INC.

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Dated: September 19, 1994